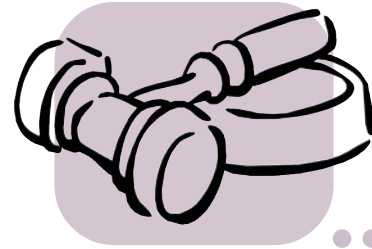




## Waivers

### Reasonable Cause



#### Utah State Tax Commission

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*If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811, or TDD (801) 297-2020. Please allow three working days for a response.*

## Waivers of Penalty and Interest

The Utah State Tax Commission has the authority to waive penalty and interest charges based on reasonable cause. It is our policy to process waiver requests in a fair and expeditious manner.

Utah Code Section 59-1-401(10) reads, "Upon making a record of its actions, and upon reasonable cause shown, the Commission may waive, reduce or compromise any of the penalties or interest imposed under this part."

For purposes of the Utah State Tax Commission, reasonable cause is a cause that arises despite the ordinary care of the taxpayer. The taxpayer has the burden of proving reasonable cause by appropriate documentation. If the taxpayer is denied a waiver, the matter may be appealed as provided by the Administrative Procedures Act and the Tax Commission Rules.

**taxpayer must prove that the Tax Commission contributed to the error, giving rise to the interest through inappropriate information or action.**

The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

**A. Timely Mailing:** The taxpayer mailed the return with payment to the Tax Commission by the due date and the return was not timely delivered by the post office through no fault of the taxpayer.

In cases where the taxpayer claims to have mailed the return with payment and the Tax Commission has not received it, the penalties may be waived if the taxpayer can meet the following requirements:

1. the taxpayer has an excellent history of timely filing and payment; and
2. the taxpayer establishes that sufficient funds were in the bank, and that the check was written in numerical order.

**B. Wrong Filing Place:** The return was filed on time, but was delivered to the wrong office or agency.

**C. Death or Serious Illness:** The delay was caused by the death or serious illness of the taxpayer or a member of the immediate family. With respect to a business, trust or estate, the death or illness must have been of the individual or his immediate family, who had sole authority to file the return. The death or illness must occur on or immediately prior to the due date of the return.

**D. Unavoidable Absence:** The taxpayer having sole responsibility to file the return was unavoidably absent from the state.

**E. Disaster Relief:** Delay in reporting, filing or paying is due to a federal or state declared disaster or a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business. If delinquency or delay is due to a federal declared disaster, federal relief guidelines shall be followed. In the absence of federal guidelines and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

## Waiver Procedures

A request for waiver of any penalties and/or interest will be considered when:

- a. the taxpayer provides a signed statement requesting a waiver;
- b. the total tax owed for the period(s) has been paid;
- c. the tax liability is from a filed return and not from estimated or non-filing amounts; and
- d. the taxpayer has not previously received a waiver review for the same period(s).

When a waiver request has been received, the Tax Commission will:

- a. review the request;
- b. notify the taxpayer if additional documentation is needed to consider the waiver request; and
- c. review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

**The grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the**

**F. Reasonable Reliance on Erroneous Tax Commission**

**Information:** The Commission may waive penalties on taxpayer underpayments that are attributable to incorrect written advice obtained from the Commission, unless the taxpayer has given the Commission inaccurate or insufficient information. The Commission may also waive penalties if the taxpayer failed to timely file or pay due to receiving erroneous information from a Tax Commission employee. The taxpayer's failure will also be excused if he can demonstrate that he timely requested the necessary tax forms and instructions and the Tax Commission failed to timely provide them.

**G. Tax Commission Office Visit:** The taxpayer proves that before expiration of the time period he visited a Tax Commission office for information or help in preparing the return and, for reasons beyond the taxpayer's control, was unable to see a Tax Commission employee.

**H. Unattainable Records:** Failure to timely file may be excused if, because of reasons beyond his control, the taxpayer was unable to obtain records to determine the amount of tax.

**I. Reliance on Competent Tax Advisor:** The taxpayer fails to file after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised him that a return was not required.

- It should be noted that the duty to file remains with the taxpayer; reliance on a tax advisor to prepare a return does not constitute reasonable cause for failure to file or pay. The taxpayer should demonstrate that he exercised ordinary business care and prudence based on his own knowledge in determining whether to seek further advice.

**J. First Time Filer:** This is the first return required to be filed by the taxpayer and he filed and paid within a reasonable time.

**K. Error Caught by Taxpayer:** Prior to any billing notices being mailed by the Tax Commission, an error is caught and corrected by the taxpayer, and the taxpayer has very few or no prior errors.

**L. Verified Bank Error:** If the Taxpayer's bank has made an error in returning a check, making a deposit or transferring money, this may be considered reasonable cause. A letter from the bank verifying its error is required.

**M. First Error:** The error is the first in the history of the taxpayer's account or within a three-year look-back period. The look-back period begins with the most recent period being considered for waiver and runs back three years. Waiver for first-time error is appropriate if:

- a. No other tax returns or reports are overdue at the time of the request or waiver.
- b. The taxpayer has not received a prior penalty waiver or reduction within the look-back period. An abatement of any penalty erroneously imposed during the look-back period will not count against the taxpayer.
- c. For penalties assessed in an audit, the error giving rise to the penalty is not the same as or similar to any error found in a prior audit of the taxpayer, whether or not that audit was conducted during the look-back period.

**N. Employee Embezzlement:** If the taxpayer can show the inability to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

**O. Recent Tax Law Change:** The taxpayer's failure to file and pay was due to a recent change in tax law and the taxpayer could not reasonably be expected to be aware of the change.

**P. General Considerations:** The Tax Commission considers in its determination of reasonable cause how often the taxpayer has been delinquent, whether the Tax Commission had to take legal means to collect the taxes, whether Tax Commission records document that the reason is valid, and the length of time between the event cited as a reason and the filing date.

Ordinarily, ignorance of the law, carelessness, forgetfulness, intentional disregard, intent to evade or fraud does not constitute reasonable cause. Other facts must support the taxpayer's contention that reasonable cause for waiver exists.

Other clearly established, extraordinary and unanticipated reasons for late filing or payment that show the taxpayer had reasonable cause and was unable to comply may justify a waiver of the penalty. Each case is judged on its individual merits.

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*This publication is to be used as a guideline only, and does not reflect the complete standards for waiver of penalty and/or interest.*